



Atty Dkt No. 5030-0001.24  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

In Re Application of:  
Evan C. UNGER et al.

Confirmation No.: 8279

MAY 28 2004

Serial No.: 09/912,609

Group Art Unit: 1617

OFFICE OF PETITIONS

Filing Date: July 25, 2001

Examiner: Shahnam J. SHARAREH

Title: NOVEL TARGETED DELIVERY SYSTEMS FOR BIOACTIVE AGENTS

**SECOND PETITION REQUESTING CORRECTED FILING RECEIPT UNDER 37 C.F.R. 1.78(a)(3)**  
(CORRECTION OF BENEFIT CLAIM)

Mail Stop PETITIONS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is a second request to correct a benefit claim after filing.

Reference to the prior applications was made in the first sentence of the specification. However, an incorrect serial number was inadvertently identified therein. The serial number was set forth therein as "09/703,474," and should have correctly read "09/703,484." Correction is now requested.

**FIRST PETITION-UNINTENTIONALLY DELAYED BENEFIT CLAIM-FEE REQUIRED**

Under 37 C.F.R. 1.78(a), an unintentionally delayed request to correct a benefit claim after filing can be submitted with a petition requesting such, and the surcharge of \$1300.00 as set forth in 37 C.F.R. 1.17(t).

It is believed that the error arose because the instant application and the parent applications were filed and prosecuted, until now, by different firms. The parent application, U.S. Serial No. 09/703,484, was filed on October 31, 2000 by the predecessor of the undersigned law firm of Reed & Eberle LLP.

The instant application, U.S. Serial No. 09/912,609, was filed on July 25, 2002, by the firm of Woodcock Washburn. The two applications were prosecuted by these respective firms until about May 27, 2003, when the instant application was transferred to the undersigned.

Upon review of the transferred file wrapper of the instant application, U.S. Serial No. 09/912,609, the error in benefit claim was brought to light and correction was requested on July 3, 2003 by the filing of a Petition Requesting Corrected Filing Receipt Under 37 C.F.R. 1.78(a)(3) ("First Petition").

Applicants asserted that the benefit claim had been unintentionally delayed since the error was just realized prior to filing the First Petition.

#### DECISION ON THE FIRST PETITION

A Decision on the First Petition (the "Decision") was mailed on March 25, 2004, and dismissed the petition. The basis for the dismissal was the filing of a Preliminary Amendment with the First Petition that included "incorporation by reference" language.

The Decision held that the Preliminary Amendment was not acceptable as drafted, since it improperly incorporated by reference the prior-filed application.

The Decision further stated that before the petition could be granted, a substitute amendment must be submitted, along with a renewed petition.

#### SECOND PETITION-UNINTENTIONALLY DELAYED BENEFIT CLAIM-NO FEE REQUIRED

A Substitute Preliminary Amendment is hereby enclosed, along with this Second Petition Requesting Corrected Filing Receipt Under 37 C.F.R. 1.78(a)(3).

No additional fee is believed necessary.

#### CORRECTION TO OFFICIAL FILING RECEIPT

Attached is a copy of the official Filing Receipt received from the Patent Office and mailed August 21, 2001 in the above-identified application for which issuance of a corrected filing receipt is respectfully requested.

The following correction to the official Filing Receipt is requested. The Domestic Priority data as claimed by applicant is incorrectly entered as:

This application is a CIP of 09/703,474 10/31/2000  
which is a CIP of 09/478,124 01/05/2000

Please correct the Priority data as claimed by applicant to read:

-- This application is a CIP of 09/703,484 10/31/2000  
which is a CIP of 09/478,124 01/05/2000 --.

PRELIMINARY AMENDMENT (SUBSTITUTE)

A request for Corrected Filing Receipt must be accompanied by an amendment to the specification to reiterate the correct benefit claim.

Accordingly, enclosed herewith is a Substitute Preliminary Amendment so as to correct the text of the specification where the error occurred.

The specification, as filed, referred to U.S. application Serial No. 09/703,474 and U.S. application Serial No. 09/478,124. However, "09/703,474" was an incorrect number, as "09/703,484" was the correct priority document.

The Substitute Preliminary Amendment serves to correct the specification to recite the correct serial number.

In addition, the specification, as filed, incorporated by reference the disclosures of U.S. Serial No. 09/703,474 and U.S. Serial No. 09/478,124.

The Patent Office has indicated that the correction of U.S. Serial No. "09/703,474" to "09/703,484" does not permit the disclosure of "09/703,484" to then be incorporated by reference. However, U.S. Serial No. "09/478,124" was correctly identified in the specification, as filed, and was properly incorporated by reference in the specification, as filed.

Therefore, the Substitute Preliminary Amendment also serves to correct the "incorporation by reference" language. Instead of both applications (one of which was the wrong number) being incorporated by reference, only the application correctly identified in the specification, as filed, is now incorporated by reference.

Respectfully submitted,

By: *Shelley Eberle*  
Shelley P. Eberle  
Registration No. 31,411

REED & EBERLE LLP  
800 Menlo Avenue, Suite 210  
Menlo Park, California 94025  
(650) 330-0900 Telephone  
(650) 330-0980 Facsimile

F:\Document\5030\0001\24\Petition-Correct OFR and benefit claim(2).DOC